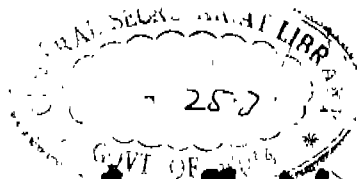


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EXTRAORDINARY

PART II—Section 3—Sub-section (ii)

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No. 28] NEW DELHI, MONDAY, MARCH 17, 1958/PHALGUNA 26, 1879

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 10th March 1958/19th Phalguna 1879 Saka

S.O. 259.—Whereas the election of Shri Narain Din Palmiki as a member of the House of the People from the Shahjahanpur constituency has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (43 of 1951), by Shri Lakhan Das, son of Shri Jodha Das, resident of Bahadurganj, Shahjahanpur;

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act, for the trial of the said election petition, has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order in the said election petition to the Commission;

Now, therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, SHAHJAHANPUR

PRESENT:—Shri H. P. Varshni, H.J.S. (Distt. Judge)—Member.

ELECTION PETITION No. 474 of 1957.

Shri Lakhan Das, S/o Jodha Das, aged about 50 years, r/o Bahadurganj, Shahjahanpur.—*petitioner.*

Versus

1. Sri Narain Din Valmiki, s/o not known, r/o Darulshafa, Lucknow.
2. Sri Ram Dularey Lal, s/o not known, r/o Mohalla Sarai Kayan, Municipal Commissioner, Shahjahanpur.
3. Sri Babu Ram Jayant, r/o Mohalla Katra Etah.
4. Sri Bishan Chander Seth, s/o L. Kali Charan Seth, Kalicharan Road, Shahjahanpur.
5. Shri Darbari Lal Sharma, President District Board, Bareilly.
6. Sri Ajodhia Nath Vaid, s/o Kashi Nath Vaid, r/o Mohalla Bagh Khirni, Shahjahanpur.
7. Sri Pritpal Singh, President, District Board, Shahjahanpur.
8. Sri Faqrey, Secretary, Bhartia Jansang, Qayamganj, District Fatehgarh.—*Respondents.*

JUDGMENT

This Election Petition relates to the Shahjahanpur Parliamentary double-member constituency comprising the whole of this district and parts of Farrukhabad and Etah districts. Out of the two members to be elected from this constituency, one seat was reserved for the Schedule Caste and the Respondent No. 1 Sri Narain Din Valmiki, who contested the seat on the Congress ticket was elected. The Petitioner Sri Lakhna Dass who questions the election of Sri Narain Din contested the seat as an Independent and Sri Ram Dularey Lal of Shahjahanpur and Sri Babu Ram Jayant of Etah, Respondents Nos. 2 and 3 respectively also contested the reserved seat, while the Respondents Nos. 4 to 8 had contested the general seat of the constituency and were impleaded *pro-forma*.

The elections in the constituency took place at the various polling stations on 25th and 28th February and on the 3rd, 6th, 9th and 12th March 1957. Counting of votes was made at Shahjahanpur from 20th March to 25th March and the result was declared on the last day of counting when Sri Narain Din Balmiki was declared elected for the scheduled reserved seat and the Respondent No. 4 Sri Bishan Chandra Seth was declared elected to the general seat. The Respondent No. 1 obtained about 1,10,000 votes while the Petitioner obtained about 90,000 votes and Sri Ram Dularey and Sri Babu Ram Jayant the other two candidates for the reserved seat obtained a lesser number of votes.

The Petitioner seeks to get the election of the Respondent No. 1 declared void on the ground that the latter committed corrupt practices of bribery by offering and paying money to a number of electors as an inducement to them to cast their votes in his favour, by paying money to his agents to procure votes for him, by hiring and procuring vehicles on payment for carrying electors to various polling stations on the polling days, by taking the help of certain Lekhpals who were Government servants, for the prospects of his election and by inducing the voters to vote for him on promises of securing remissions and *taqavi* loans for them from the Government and by systematic appeals on ground of caste and by using the National Flag for the furtherance of the prospects of his election. It was alleged that the result of the election had been materially affected by the commission of the above corrupt practices by the Respondent No. 1 and that the Respondent No. 1 had not made a correct return of his election expenses and was disqualified from being a member of the House of the People on that ground also. The Petitioner therefore, prayed for the election of the Respondent No. 1 from the Shahjahanpur Parliamentary constituency (No. 315) to be declared void and the Petitioner to be declared duly elected in his place, and costs being awarded to him. The particulars of the various corrupt practices alleged in the petition were given in Schedules I to VII appended to the petition. The Petitioner had also made allegations about the Respondent No. 1 through his caste fellows, putting pressure on the electors to vote for Respondent No. 1 by threatening to refuse their services to the electors and the Respondent No. 1 through his agents got false votes cast in his favour. But the two subparagraphs relating to these allegations were struck off on objection raised by the contesting Respondent as the Petitioner was unable to furnish particulars as to the time, date and place of those alleged corrupt practices.

The Respondent No. 1 Sri Narain Din Valmiki alone contested the petition. The other respondents impleaded in the petition did not enter appearance and the proceedings against them were *ex parte*. The contesting Respondent denied all the allegations contained in the Petition relating to the alleged corrupt practices and pleaded that he was more or less a stranger to Sahajahanpur not being a resident of the district and that the persons alleged to have been bribed by him whose names were specified in the schedules appended to the petition were not even known to him and that they were under the influence of the petitioner and were residents of his village or neighbouring villages. In particular it was denied that any bribes were offered by him or that he took the help of government servants or Lekhpals or made any appeals on the ground of caste to canvass votes or procured vehicles for the conveyance of voters. It was further pleaded that the return of expenses submitted by him was correct and that his election to the House of People was valid in all respects and the Petition was liable to be dismissed with costs.

The following issues were framed:

ISSUES

1. Whether the respondent No. 1 committed the corrupt practice of bribery of offering and paying money to the electors mentioned in Schedule No. 1.
2. Whether the election expenses field by the Respondent No. 1 are incorrect? If so, its effect.
3. Whether the Respondent No. 1 paid Rs. 5/- to each of the persons mentioned in Schedule No. 2 on the dates specified therein? If so, how does it affect the petition?
4. Whether the Respondent No. 1 or his agents committed the corrupt practice of hiring and procuring on payment vehicles for carrying voters to various polling stations and back to their houses on the polling dates, as given in Schedule 3?

5. Whether the Respondent No. 1 committed the corrupt practice of taking the aid of Government Lekhpals and threatened the voters to vote for Respondent No. 1 as detailed in Schedule 4?

6. Whether the Respondent No. 1 committed a corrupt practice by inducing the voters to vote for him on promise of his securing to them TAQAVI and GOVERNMENT GRANT at the places and the dates given in Schedule 5?

7. Whether the Respondent No. 1 committed a corrupt practice of systematically appealing to members of his community on the ground of caste?

8. Whether the Respondent No. 1 used the National Flag for the furtherance of the prospects of his election? If so, to what effect?

9. Whether the result of the election has been materially affected on account of the corrupt practices mentioned above?

10. Is petitioner entitled to the relief claimed or to any other relief?

FINDINGS

Issue No. 1.—The relevant allegation of the Petitioner about the Respondent No. 1, offering and paying money to electors as an inducement to them to cast their votes in his favour is contained in paragraph 5 (a) of the Petition and the Schedule I the names of Ram Ratan Singh Pradhan of Banthri, Jangi Singh Jit Singh, Banwari Singh and Fateh Singh other residents of the same village are given as the persons who were bribed by Respondent No. 1. On 27th February 1957 a day before the polling in that area at Amaipur Sanda Polling Station Ram Ratan Singh and Banwari Singh were alleged to have been paid a sum of Rs. 50 each and the other three persons named, a sum of Rs. 25 each.

In the same Schedule Ram Saran, Ram Chander Singh, Puttu Lal and Munshi Lal four residents of village Kota were alleged to have been paid Rs. 25 each as bribes by the Respondent No. 1 on the same day, 27th February, 1957 and another four persons Kandhari Singh, Jogender Pal Singh, Ram Chander Lal and Chhutta Singh were alleged to have been paid sums of Rs. 25/- each on the same day 27th February, 1957 in village Chiti of which the polling station was at Jaura.

(P.W.3) Ram Ratan Singh Pradhan of village Banthri, (P.W.4) Jalram Singh Secretary of the District *ad hoc* committee of the District Congress of Shahjahanpur, (P.W. 6) Banwari Singh sarpanch of Banthri, (P.W.22) Ram Krishan and (P.W.26) Fateh Singh of Banthri were examined by the petitioner to prove the alleged bribes by the Respondent No. 1 to the five persons enumerated in the first part of Schedule I of Banthri, though the time of these alleged payments is not specified in the petition or its schedule, these witnesses stated that the Respondent No. 1 reached village Banthri at about 9 or 10 A.M. and stayed there for about an hour, till about 11 A.M. Thus we have the statement of Ram Ratan Singh that Sri Narain Din came about a pahar after sunrise, stayed for an hour, appointed the five agents there and then went to village Kota. (P.W.4) Sri Jalram Singh stated that he along with respondent reached Banthri at about 10 A.M. and remained there till about 11 A.M.

The respondent was then alleged to have proceeded to village Kota where he made the alleged payments of Rs. 25/- each, to the four persons of Kota specified in Schedule I and the witnesses fixed the time of his visit to that village between 11 A.M. to 12-30 P.M. These witnesses are (P.W.4) Jalram Singh who alleged that he accompanied the respondent (P.W.5) Raja Ram (P.W.10) Ram Saran Lal, (P.W.18) Roshan Lal, (P.W.27) Ewaz Singh, (P.W.28) Raghunath Singh and (P.W.35) Munshi Lal of Kota. (P.W.10) Ram Saran stated that the Respondent No. 1 remained over an hour and a half in village Kota at noon and then proceeded to village Chiti.

As regards the alleged payments of the bribe in village Chiti to the four persons specified in the last part of Schedule I we have the statements of the omnibus witness Jalram Singh (P.W.4), (P.W.7) Ram Chandar Lal, (P.W.8) Ewaz Singh, (P.W.14) Durga Singh and (P.W.25) Kanhai Singh. These witnesses did not specify the time at which the respondent No. 1 reached village Chiti but it was not denied that the respondent came there on 27th February 1957 from village Kota at about noon and from there he proceeded to village Bairampur. We have the statement of (P.W.9) Sri Niwas of village Kumarkha that the Respondent No. 1 reached Bairampur at 2 P.M. (P.W.1) Noor Mohammed and (P.W.2) Khem Karan of Bairampur stated that Sri Narain Din came to the village at 2 or 2-30 P.M. that day and stayed for an hour till about 3 P.M. Thus according to the Petitioner's evidence of these various witnesses, the Respondent No. 1. Narain Din was in villages Banthri, Kota, Chiti and Bairampur from about 10 A.M. till about 3 P.M. a day before the polling in

that area. All the witnesses were again definite that this was on the 27th February 1957, a day before the election on 28th February 1957.

The Respondent No. 1 Sri Narain Din asserted that he did not stir out at all on 27th February 1957 and remained throughout that day at Shahjahnpur and that as he was a comparative outsider and the Petitioner being a local resident, with influence as member of the District Board, and an ex-member of the State Assembly, and being connected with the local Congress Committee, all these witnesses falsely deposed against him and the evidence had been concocted for the purpose of the petition. He examined a number of witnesses to prove his presence at Shahjahnpur, that day from about 10 A.M. till in the evening at 5.30 P.M. Thus he alleged that Rev. Sri Zaheer Ahsan the Superintendent of the District Methodist Church, Shahjahnpur came to see him at his house at about 10 A.M. that day and that he then went to see the District Magistrate, Sri S. P. Arren at the latter's house before 11 A.M. to complain about polling booths and certain election arrangements. As Sri Arren advised him to apply to the Election Officer, he came home and then went to the Collectorate and presented two applications personally to Sri S. N. Saksena, District Election Officer and then inspected the records and list of polling stations at the Election office for two hours up till 1.30 or 2 P. M. He returned home and rested for some time and then went to see Sri Zaheer Ahsan at the latter's house at 4 P.M. After taking tea with the latter, he went to the shop of Dr. Harbans Lal Aryan, and took an injection for his chronic complaint of low blood pressure, at 4.45 P.M. He then attended and presided over a meeting of the Sweepers Union at the Balmiki Mandir from 5 to 5.30 P.M. In support of his statement he examined (R.W. 2) Shri Zahir Ahsan with his diary (Ex.A 4) in which both the engagements at 10 A.M. as well as at 4 P.M. are noted under date 27th February 1957. The District Magistrate (R.W. 12) Sri S. P. Arren was also examined and his Visitors Book (Ex. A5) was produced to show that Sri Narain Din's name is entered on 27th February 1957 as a visitor in that book. He examined (R.W. 11) the District Election Officer Sri S. N. Saksena, with the two applications (Exts. A6, and A7), presented that day by him and one of those applications (Ex. A6) bears an endorsement of Sri Saksena that it was personally presented to him by the Respondent No. 1. (R.W. 12) Ajudhia Prasad, the Head Clerk of the Election office was examined to prove that the Respondent inspected the list of polling stations after making the application (Ex. A7) and made notes from that list. As the Respondent had complained against the office, the witness had asked him to note the time during which he inspected the records and in his presence, the Respondent No. 1. noted it as 2 hours at about 1.30 P.M. that day on the back of Ex. A7. (R.W. 4) Dr. Harbans Lal Aryan was examined to prove that on the last Sheoratri day, which fell on 27th February 1957 he gave Respondent No. 1 an injection for blood pressure which was low at that time, at about a quarter to 5 P.M. and finally (R.W. 8) Sri Sumer Lal a member of the local Municipal Board, connected with the Sweepers Union and (R.W. 10) Bachu Lal were examined to support the statement of the Respondent No. 1 that he presided at the meeting of the Sweepers Union held that day at the local Balmiki temple near the Town Hall from 5 P.M. to 5.30 P.M. and the Minute Book (Ex. A5) of the Union was produced to prove the proceedings of that meeting.

In this connection the distances of the villages which were alleged to have been visited by the Respondent No. 1 according to the evidence for the Petitioner must also be kept in mind. The villages Bantari, Kota and Chiti lie at short distances of 2 or 3 miles from each other but at distances of 8 to 10 miles from Miranpur Katra along *kacha* roads, Miranpur Katra being at a distance of about 19 miles from Shahjahnpur on a good metalled road. These three villages are to the South-West of Katra while villages Birampur and Kumarkha are 5 or 6 miles respectively towards the north-west of Katra. Any one visiting these villages even by a jeep car, as alleged in the Petitioner's evidence, will have to leave the city at about 8 A.M. and would be unable to return till about 4.30 P.M. since the evidence led on behalf of the Petitioner suggests that he was at Birampur till about 3 P.M. that day. Thus the evidence led on behalf of the Petitioner and that of the contesting Respondent are contradictory and both the versions cannot be true. One set of witnesses is clearly false.

It is noticeable in the Petitioner's evidence that most of the witnesses examined for him are either neighbours or his associates or belong to his Jatav community. The Petitioner Sri Lakhan Das is a resident of village Bauri, which lies close to village Bantari, Kota and Chiti. Sri Lakhan Das has old associations with the District Congress, having been a member for about 20 years. He left it when he was not given a Congress ticket at the last General election, to contest for the Assembly seat. He has been and is still a member of the local District Board. The local Congress committee is, according to the evidence led by the parties, split up into groups and factions. According to the statement of Sri Narain Din, Sri Prem Kishan Khanna, a leading member of the local Congress Committee worked against his interests as he wished the Congress ticket to go to Sri Lakhan Das and P.W. Jaiaram Singh being the Secretary under Sri Khanna danced to his tune. A son of Sri Jaiaram Singh is a teacher under the District Board of which Sri Lakhan Das is a member. (P.W. 3) Ram Ratan Singh claimed to have known Sri Lakhan Das for the last 10 years, while P.Ws. Jaiaram Singh and Raja Ram stated that they had known the Petitioner for the last 15 years. (P.W.6) Banwari Singh claims acquaintance with the Petitioner for the last 7 years (P.W. 13) Roshan Lal contradicted

the other witnesses examined for the Petitioner, who stated that Sri Narain Din had come on a jeep car and asserted that the latter came on a Rahu or Bullock cart. The falsity of the statement of (P.W. 22) Ram Krishn that Sri Narain Din handed over the bribes to the five agents at Banthri in his presence, is fully illustrated by the fact that this witness could not recognize Sri Narain Din when he was asked to pick him out in court though the latter was present in court room at the time. P.Ws. Ewaz Singh and Raghunath Singh belong to the same family and Raghunath Singh was prosecuted under section 307 I.P.C., while a brother of Ewaz Singh was prosecuted for robbery and dacoity. (P.W. 9) Srinivas of village Kumarkhan is known to the Petitioner for the last five years. He was in jail having been prosecuted under section 307 I.P.C. and again under Section 302 I.P.C. and the Petitioner Sri Lakhan Das used to visit him in jail. This witness was arrested in connection with the Khirai dacoity and again in connection with Bichhwa dacoity and admitted that at present a case for assaulting his uncle under section 307 and another case for assaulting a *chaukidar* were pending against him. Similarly (P.W. 7) Ram Chandar Lal of village Chiti admitted that he was arrested twice for dacoity and that he was under police surveillance for 5 or 6 years. No reliance can be placed on the evidence of such disreputable witnesses about the alleged payment of bribes.

As regards the Respondent's evidence on this point, it must be noted that the witnesses examined by him are clearly more responsible persons as compared to those examined for the Petitioner. What is more, their statements are supported by documentary evidence. Thus, Sri Zaher Ahsan produced his diary (Ex. A4). This diary appears to have been kept in the usual course by the witness who, as Superintendent of the Methodist Church properties of several districts holds a responsible post. In the same diary another engagement with the Respt. is noted on 1st January, 1957 and there is no reason to doubt the correctness of the entries made by this witness. The District Magistrate Sri S. P. Arren, no doubt made a non-committal statement that he had no recollection of his meeting the Respondent on that particular day, but on the basis of the entry made by the Respondent No. 1, in his Visitors Book, he could say that the Respondent saw him. This entry was attacked by the Petitioner on the ground that the entry was made in between the existing lines of the Visitors Book and could have been surreptitiously made at a later date. Respondent No. 1 saw the District Magistrate on several other dates and the entries of his name made on 16th January, 1958 and 22nd January, 1958 also exist in between the drawn up lines of the book.

Similarly there is nothing to doubt the statement of the District Election Officer Sri S. N. Saksena supported as it is, by the two applications (Exts A6 and A7) personally presented to him during office hours that day by Respondent No. 1 or the statement of the Head Clerk of the Election office that Sri Narain Din inspected the list of polling stations and made notes therefrom, about 11-30 to 1-30 P.M. or 2 P.M. There is an endorsement on the application (Ex. A6) in the hand of Sri Saksena that it was personally presented to him by Sri Narain Din and there is an endorsement on the application (Ex. A7) that the Respondent No. 1 inspected the records for 2 hours that day, under his own signature. The Respondent explained that he had been to Powayan earlier and had noticed the defective polling booths which gave no privacy to the voter at the time of casting his vote and that he had gone to complain about this to the District Magistrate who referred him to apply to the District Election Officer and that he also inspected the list of polling stations while at the election office in connection with his election work. The Head Clerk of the Election office P.W. Ajudhia Parshad explained that as Sri Narain Din had complained against his office and had inspected the records for a long time he had asked Sri Narain Din to note the time.

There is of course no direct evidence to support the presence of the Respondent No. 1 at Shahjahanpur from about 2 P.M. to 4 P.M. that day, but there is again good evidence to show his presence here from 4 to 5-30 P.M. that day. The statement of Sri Zaher Ahsan (R.W. 2) shows that the Respondent had come to see him at his house close to the church at 4 P.M. and took tea with him. I have already remarked above that there is no good reason to doubt the testimony of this witness nor that of (P.W. 4) Dr. Harbans Lal Aryan that the Respondent No. 1 came to his shop at about 4-45 P.M. and was given an injection for his complaint of low blood pressure. The Doctor had given such injections three or four times to the Respondent and the latter stated that he had been suffering from the malady for a long time. The statements of R.Ws. 8 and 10 about the Respondent attending the Sweepers Union meeting that day are supported by entries in the register containing the minutes of that meeting (Ex. A5). All this evidence, which I consider to be trustworthy and reliable, establishes the fact that the Respondent No. 1 was present at Shahjahanpur from about 10 A.M. till 2 P.M. and again from 4 P.M. to 5-30 P.M. that day. The evidence of the respectable witnesses for the Respondent No. 1, supported by documentary entries, is clearly more reliable than that of the Petitioner.

According to the Respondent No. 1, he came to learn of the interest of Sri Khanna in the Petitioner when Shri Khanna opposed the Congress ticket to contest the Lok Sabha being issued to him. There were at least three factions in the local Congress. Such factions according to Respondent had existed for the last 5 or 6 years and only the group

led by Shri Khanna was opposed to him. The Respondent asserted that P.W. Jai Ram Singh worked as Secretary of the *ad-hoc* committee under Sri Khanna and had come to depose against him due to the influence of Sri Khanna. He also alleged that P.W. Ram Ratan Singh, Banwari Singh and Ram Krishna and Fateh Singh of Banthri, Raja Ram, Ram Saran, Lal, Roshan Lal, Ewaz Singh, Raghunanth Singh and Munshi Lal of Kota were all friendly to Lakhen Das and similarly P.Ws. Ram Chandar Lal, Ewaz Singh, Durga Singh and Kanhai Singh of village Chiti deposed under the influence of the Petitioner. Much has been said in the evidence about the influence of Shri Khanna and that he overshadowed the local Congress prior to its reverses at the last general election. As, however, Sri Khanna has not appeared as a witness nor is a party to these proceedings, I refrain from entering into this question further. I need only remark that the evidence for the Petitioner clearly appears to have been manipulated by some outside source. Unfortunately, all those witnesses who deposed about the bribes being handed out by the Respondent No. 1 in their presence in different villages on 27th February, 1957, meet their Waterloo and become thoroughly unreliable in view of the definite and reliable evidence to show the presence of the Respondent No. 1 at Shahjahanpur that day from 10 A.M. to 2 P.M. and from 4 P.M. to 5-30 P.M. In the interval between 2 P.M. to 4 P.M. it was physically impossible for the respondent No. 1 to have reached those distant villages and return to Shahjahanpur by any means of locomotion. No reliance can be placed on the testimony of the petitioner's witnesses discussed above and the alleged corrupt practice of the Respondent No. 1 offering and paying money to any of the persons enumerated in Schedule I appended to the Petition is not proved. Issue held accordingly.

Issue No. 3.—This issue is connected with issue No. 1. In Schedule II of the Petition a list of four persons (1) Ram Saran of Kota, (2) Ram Chandar Singh of Kota, (3) Shri Niwas of village Kumarkha and (4) Ahbaran Singh of Bhanbhi, were alleged to have been paid a sum of Rs. 5 each to work as polling agents for Respondent No. 1. The payments to the first two persons were alleged to have been made on 27th February, 1957, at village Kota along with sums of Rs. 25 each alleged under Issue No. 1 above. Sri Niwas was alleged to have been paid this sum of Rs. 5 at Bairampur on the same day in the after-noon, while Ahbaran Singh was alleged to have been paid Rs. 5 on 24th February, 1957. Ahbaran Singh (P.W. 3) in his statement however, denied taking any money from the Respondent No. 1 and that allegation is disproved by the evidence for the Petitioner himself. I have already remarked above under Issue No. 1 about the character of (P.W. 9) Sri Niwas of Kumarkha, and that he is a thoroughly unreliable witness. The evidence of the witnesses as regards the alleged payments at Kota P.Ws. Jai Ram Singh, Raja Ram, Ram Saran Lal, Roshan Lal, Ewaz Singh, Raghunath Singh and Munshi Lal, has also been dealt with by me under Issue No. 1 above, and it is not necessary to recapitulate it. The evidence of these witnesses being unreliable and untrustworthy, no payment of Rs. 5 each by the Respondent No. 1 to Ram Saran, Ram Chandar Singh or Sri Niwas has been proved. Since no such payment was made, it was not necessary for the Respondent to show it in his return of election expenses. Issue is accordingly held against Petitioner.

Issue No. 4.—The allegation about the Respondent No. 1 and his agents hiring and procuring vehicles for carrying electors on payment to various polling stations and back to their houses on the polling days, is contained in paragraph 5(d) of the petition and in Schedule III appended thereto. The names of 5 voters were specified as those carried on the car of Pt. Darbari Lal in Schedule III and it was alleged that the carts of Tirmal of village Mandhia, of Sundarlal of village Umarsar, and of Jhabbu Singh and Ram Chandar of village Chiti have been engaged for the purpose. It was further alleged that Sri Narain Din paid sums of Rs. 10 each to Chhuttu Singh and Ram Chandar of Chiti on 27th February, 1957, that he paid a sum of Rs. 10 to Sundar Lal of Umarsar on 2nd March, 1957, and the sum of Rs. 10 to Tirmal of village Mandhia on 5th March, 1957, as the polling days hire for each cart.

With regard to the alleged payment of Rs. 10 each to the two cartmen Chhuttu Singh and Ram Chandar of village Chiti, we have the evidence of the cartman P.W. Ram Chandar that he was paid Rs. 10 and that of (P.W. 8) Ewaz Singh, (P.W. 14) Durga Singh and (P.W. 25) Kanhai Singh, that they saw voters being carried on the cart of Ram Chandar and Chhuttu Singh. Chhuttu Singh has not been produced. Ram Chandar, as already noticed by me above admitted that he had been arrested twice for dacoity, that his house had been searched and that he remained under police surveillance for several years. This witness as also P.Ws. Ewaz Singh, Durga Singh, and Kanhai Singh have been found to be entirely unreliable under Issue No. 1. They are also found to be false since it is highly unlikely that the Respondent No. 1 could have at all visited village Chiti on 27th February, 1957, the date on which these payments are alleged to have been made.

A sum of Rs. 10 was alleged to have been paid to Sundar Lal of village Umarsar for his cart. Sundar Lal was examined as P.W. 30 and admitted that he had been prosecuted under sections 307 and 302 I.P.C. in separate cases though he was acquitted in those cases. He had also admitted that (P.W. 31) Yaqub Ali, (P.W. 32) Mohar Singh and (P.W. 33) Shyampal were co-accused with him in the case under section 307 I.P.C. These are the three witnesses who, along with a pleader's clerk Yogendrapal of that village, support the alleged payment and the carrying of voters. I consider their statements to be entirely unreliable. P.Ws. Sundar Lal, Yaqub Ali, Mohar Singh and Shyampal appear as a gang to support the petitioner while Yogendrapal was polling agent of another candidate at

another place and is a cousin of Shyampal. Their earlier unsavoury association is sufficient to discredit their testimony.

The alleged payment to Tirmal was sought to be proved by the statement of (P.W. 29) Tirmal and (P.W. 11) Itwari, (P.W. 15) Bhola Ram and (P.W. 16) Maika. All these four witnesses are of the same caste as the Petitioner and P.W. Tirmal was alleged to be related to the Petitioner. He denied this but admitted that the Nanihal of the Petitioner was in his village Mundhian (P.W. 11) Itwari belongs to the adjoining hamlet of Dhakia. These witnesses did not know the Respondent No. 1 earlier. I consider their evidence to be at par with the other discredited evidence produced for the Petitioner. It is noticeable that no complaint was made anywhere to any person in authority that the voters were being carried on carts or other conveyances. It has not been established by any good evidence that any money was paid to the four cartmen named above or that they carried any voters on their carts for Respondent No. 1 on the polling day.

The Petitioner also alleged that on the polling day at Jalalabad Sri Thaneshwar Nath Pathak Vakil, his brother Sri Pashupati Nath, a local Hon'ry Magistrate, his mother and other members of his family were carried to the polling Station at Jalalabad on the car of Pt. Darbari Lal the Congress candidate and team mate of the Respondent No. 1. The Respondent No. 1 denied this and examined Sri T. N. Pathak, who totally denied the allegations. He, even stated that he was not a voter at Jalalabad but that he was a voter at Shahjahanpur where he had been practising for the last over 20 years. He stated that he had taken his mother to the polling station at Jalalabad but was told that her name had been struck off as she was reported to be dead and she could not vote. The allegation about the witness or his family members being carried on the car of Sri Darbari Lal to the polling station at Jalalabad, which was close to his house, have been denied and are unproved, and this issue must, therefore, also be found against the Petitioner.

Issue No. 5.—It was alleged in para 5(e) of the Petition that the Respondent No. 2 took aid of the Government Revenue officials who threatened the cultivator electors to vote for the respondent No. 1 as the latter belonged to the official Congress Party and in Schedule V, the names of three Lekhpals were given as the persons who aided the Respondent in this way. They are Kedar Nath, Mewa Ram and Saran Lal.

The evidence on the point consists of the statements of (P.W. 24) vijay Lal of village Dhubla Karim Nagar, (P.W. 34) Ram Singh of Sondha Dostpur and (P.W. 38) Ram Singh of village Chiti. The Petitioner himself had no personal knowledge to support the allegation. P.W. Bijai Lal alleged that the Lekhpal Kedarnath had gone with Respondent No. 1 when the latter came to canvass him. He could not give the date or time and admitted that he (witness) belonged to the same community as the Petitioner and had known him for several years. He also admitted that he was an agent of the Petitioner at polling station Dhubla Karim Nagar. The Respondent No. 1 denied ever meeting this witness or to have canvassed him. P.W. Ram Singh of village Sondha alleged that Mewa Ram Lekhpal of village Kota had come with the Respondent No. 1 to his village for canvassing and that the Lekhpal told them that the Respondent was a man of the Government and all could profit from him. Similarly (P.W. 38) Ram Singh of Chiti stated that the Respondent No. 1 came to his village with Saran Lal Lekhpal of Paraur on 27th February 1957, a day prior to the election, stayed for about half-an-hour in the village for canvassing. The witness admitted that he was known to the Petitioner since childhood as the Petitioner was a resident of the hamlet Baun, which adjoined village Chiti.

As against this evidence we have the statement of the Respondent No. 1 totally denying the allegations, and two of the Lekhpals named Saran Lal and Mewa Ram have been examined as (R.W. 1) and (R.W. 6) respectively. They totally denied having gone to any village along with the Respondent No. 1 or to have canvassed for him. R.W. Saran Lal stated that he never saw the Respondent in village Chiti at the time of the Lok Sabha elections and R.W. Mewa Ram stated that he saw Narain Din for the first time in court at the trial and that he had never approached him nor accompanied him to village Sondha. With regard to the alleged visit of the Respondent No. 1 to village Chiti on 27th February 1957, it has already been noticed under Issue No. 1 above that the Respondent could not have visited that village on that day and the evidence, led for the Petitioner stands discredited. Though Kedar Nath has not been produced the statement of the P.W. Bijai Lal agent of the Petitioner is an interested statement which is not worthy of belief. The Respondent No. 1 is thus not proved to have taken the help of any Lekhpals or Government servants for this election or to have committed the corrupt practice alleged.

Issue No. 6.—In para. 5 (f) of the Petition it was alleged that Rabi crop in the constituency was damaged due to hail storms a short time before the elections and that the Respondent No. 1 induced voters to vote for him on promises that he would secure Government grants and Taqavi loans for them, and in Schedule V attached to the Petition 12 placed in the constituency were specified where such appeals had been made during the period 6th March 1957 to 11th March 1957.

The witnesses who were examined for the Petitioner on this issue are (P.W. 12) Gendan Lal, (P.W. 17) Ram Chandar, (P.W. 18) Bhagwan Das and (P.W. 19) Kewal Ram. Gendan Lal is a resident of village Simaral and stated that Sri Narain Din came to canvass votes a day before the polling day and told the villagers that he would obtain *taqavi* loans and remissions for them if they worked for him. According to him these appeals had good effect as due to hail-storms nearly half the crops were destroyed. (P.W. 17) Ram Charan is a resident of Allahganj. He belongs to the same community as the Petitioner and it was suggested for the Respondent that the tax levied on him by the District Board had been reduced and his son was given a stipend on the recommendation of the Petitioner. P.W. Bhagwan Das is also a resident of the same village. But he contradicted the earlier witness Ram Charan and asserted that a loud-speaker was attached to the jeep car on which Sri Narain Din came to Allahganj and that the latter had spoken from the loud-speaker while Ram Charan totally denied the existence of any loud-speaker. P.W. Kewal Ram is another resident of Allahganj belonging to the Jatav community. There are a number of contradictions in the statements of these three witnesses for example Kewal Ram placed the visit of the Respondent to Allahganj in the month of January, Bhagwan Das alleged that it was in the beginning of Phalguna, while Ram Charan stated that he came at the end of Phalguna. According to the witnesses only one visit was made. The Respondent totally denied having gone to village Allahganj or to have made any such promises. (P.W. 7) Sikhdar Singh was examined in support. The general evidence produced for the Petitioner that Respondent No. 1 promised the voters to obtain *Taqavi* loans or remissions for them is of little help even if the denial of the Respondent is disregarded, since many candidates make false promises while canvassing for votes, to move earth and heaven to make a better world and such language by a little twisting can be easily made into a corrupt practice. We have the statement of the Petitioner's own witness Ram Charan (P.W. 17) to the effect that the other candidates who came, promised in their speeches to get the rates of sugarcane raised, to get the price of sugar reduced, as also to get the rates for rent and irrigation reduced. It is further noticeable that not a single application for remission of rent or for *Taqavi* was made by any of these witnesses nor was Respondent No. 1 even approached by them after he was successful at the election to make good his promises. If such promises had been made and if the witnesses had believed such promises, some such applications were to be expected. No such corrupt practice as alleged has been established against the Respondent No. 1.

Issue No. 7.—There is no evidence worth the name except the general allegation of the Petitioner Sri Lakhman Das that the Respondent appealed to members of his community, the sweepers to vote on ground of his community, and not to vote for any candidate of any other community. Sri Lakhman Das, however, did not depose on personal knowledge and had not attended any such meeting where the Respondent No. 1 was alleged to have made such appeals. The time, date or place of any such meeting was not specified in the Petition and we have the statement of the Respondent No. 1 that he never made any appeals to members of his community to vote for him on ground of caste. The allegation remains unproved and the issue is held in the negative.

Issue No. 8.—In para. 5(i) of the Petition, it was also alleged that the Respondent No. 1 used the National Flag for the furtherance of the prospects of his election. The Petitioner's evidence on this point consists of the statement of (P.W. 1) Noor Mohammad and (P.W. 2) Khem Karan, both residents of village Birampur. The witnesses stated that a day before the election in that area i.e. on 27th February 1957 the Respondent No. 1 had come to canvass for votes to their village on a jeep car with the National Flag—a tri-colour, with the *chakr* on the white portion of the flag, placed on his jeep car. The witnesses agreed that he came only once to the village. (P.W. 1) Noor Mohammad admitted that he had worked for the Petitioner at the election and Khem Karan similarly admitted that he had worked for Sri Lakhman Das while he was in the Congress. He belongs to the same caste as the Petitioner and stated that he did not like the Congress decision refusing the ticket to Sri Lakhman Das. He also admitted that the jeep car did not belong to Narain Din but to the then Congress M.L.A. Sri Prem Kishan Khanna, whose interest in the election, adverse to the Respondent No. 1 has already been commented upon (under Issue 1). The witness admitted that no reference was made by the Respondent No. 1 to the Flag. In view of the total denial of the Respondent No. 1 and the fact that his presence at Shahjahanpur has been established on the day, he is alleged to have visited Bairampur, I have no hesitation in holding the evidence of P.Ws. Noor Mohammad and Khem Karan to be false. The Congress Flag, a tri-colour with *charkha* (spinning wheel) instead of a *chakr* (wheel) can be easily mistaken for the National Flag from a distance and in any case, a none too scrupulous witness can easily assert it to be so. The Respondent No. 1 is not proved to have used the National Flag for the furtherance of his election.

Issue No. 2.—The return of Election expenses furnished by the Respondent No. 1 is attacked as incorrect by the Petitioner on three grounds:

Firstly.—It is alleged in paragraph 5(c) that the Respondent No. 1 paid a sum of Rs. 5 each to the four persons who acted as his agents and whose names are specified in Schedule II of the Petition and that this total sum of Rs. 20 has not been shown by the Respondent No. 1 in his return.

Secondly.—It was alleged that the Respondent No. 1 sent a sum of Rs. 50 to Dr. Sia Ram an ex-M.L.A. of Farrukhabad, for expenses in connection with his election in that district and that this sum of Rs. 50 does not find a place in the return.

Thirdly.—It was alleged that certain leaflets were distributed in furtherance of the election of the Respondent No. 1 under the signature of Sri Lal Bahadur Shastri and that a sum of about Rs. 120 paid to the Gandhi Press, Shahjahanpur for the paper and printing of those leaflets has not been shown in the election return of the Respondent No. 1 which is therefore incorrect.

It has been found above under issue No. 8 that the allegation of the Petitioner about payment of Rs. 5 each to Ram Saran and Ram Chandar Singh of Kota and to Shri Niwas of Kumarkha is not established. Ahbaram Singh of Bhanbhi denied the alleged payment when examined as a witness for the Petitioner. With regard to the alleged payments to the above named three persons it has also been found that the allegation of Respondent No. 1 visiting villages Kota or Bairampur (where payment to Sri Niwas is alleged to have been made) on 27th February 1957 is false. It was in the alternative suggested by some witnesses for the Petitioner that those payments of Rs. 5 to these agents were made by the Respondent No. 1 for stationery and other expenses in connection with election. This has, however, been denied by the Respondent No. 1 and the actual payment, for whatever purpose it may have been made, having been disproved, there was no question of these sums being shown in his return by the Respondent No. 1. There is force in the assertion of the Respondent No. 1 that he did not appoint the four persons named in schedule as Agents but that they had been appointed agents for him by Sri Damodar Das and the other Congress workers and factions having arisen in the local Congress, some of the Congress workers were ready to support the Petitioner, who had earlier long association with the party.

With regard to the second allegation of the payment of Rs. 50 to Dr. Sia Ram of Farrukhabad, we have the admission of the Respondent No. 1 (examined as R.W. 14), that a sum of Rs. 50 was sent to Dr. Sia Ram by Money Order, but the Respondent asserted that it had nothing to do with his election. According to him, Dr. Sia Ram and himself had jointly occupied a Government quarter in Darul Shafa at Lucknow, while they were members of the State Legislature, from December, 1952 to April, 1953, and that both of them shared the mess expenses which were at that time incurred by Dr. Sia Ram. A sum of Rs. 88 was payable by him to Dr. Sia Ram who made demands and had also sent him a letter. According to Respondent No. 1 he could not pay this amount due to his illness, and other causes. He had written to his wife at Lucknow to remit a sum of Rs. 50 to Dr. Sia Ram by Money Order and that his wife sent this money some time in January, 1957 by a money order. The Money Order form was not summoned by the Petitioner. Dr. Sia Ram of Qaim Ganj Farrukhabad was examined as a witness and he has fully supported the statement of the Respondent No. 1 in all respects. (R.W. 2) Sri Haribhushan Singh the Caretaker of the Government buildings in Darul Shafa, Lucknow has further corroborated the statement of the Respondent No. 1 and of Dr. Sia Ram that these two persons jointly occupied quarter No. 34 of Darul Shafa in certain months of 1952 and 1953 and that they had messed jointly. There is no good reason to doubt the testimony of these two responsible witnesses. The only question that strikes is that the Respondent No. 1 had not paid his mess charges to Dr. Sia Ram for a long time. But for that the Respondent No. 1 has explained that he had a lean purse during that period due to his frequent illness and consequent admissions to hospital. Dr. Sia Ram stated that a sum of Rs. 33/4/- was still due to him from the Respondent No. 1. It does appear that Shahshabad Tahsil of District Farrukhabad was a part of the constituency from which the Respondent No. 1 was a candidate to the Lok Sabha and Dr. Sia Ram was contesting a seat to the Vidhan Sabha from the same Tahsil. It may be that the Respondent No. 1 paid a part of his old debt to Dr. Sia Ram to appease him. He may have been afraid of Dr. Sia Ram's local influence, or the fact that a word from Dr. Sia Ram in that Tahsil about the non-payment of his dues by the Respondent No. 1 may have cost him many votes. But all the same, the payment having been made towards the mess account, which was not directly connected with the election, there was no occasion for the Respondent No. 1 to show this sum of Rs. 50 in his election return. I may observe in this connection that there is no direct evidence on behalf of the Petitioner on this point except his own hear-say statement.

As regards the printing of the leaflets, the Petitioner alleged that the Respondent No. 1 got the pamphlets printed at the local Gandhi Press through his son-in-law Sri Shankar Rao. The only witness examined by him on the point is (P.W. 30) Sri Shyam Kumar, Joint Manager of the Gandhi Press who stated from his books that on 25th February 1957 the leaflet (Ex. IV) was printed at his press and that the Manager Sri Banshi Dhar had received a sum of Rs. 120 and had issued a cash memo (Ex. V). This receipt was issued in the name of Sri Shankar Rao and the latter is described as Mantri Uttar Pradesh, Lucknow Safai Mazdoor Sangh, for printing 20,000 leaflets of Sri Lal Bahadur Shastri's appeal (Ex. V). A connected counter-foil shows that another appeal was printed for the President of the Dalit Varg Sangh, Shahjahanpur, at a cost of Rs. 25 at the same Press. Sri Narain Din in his statement totally denied that he paid this sum or that he got any of

these two leaflets published. He also denied Shankar Rao being his son-in-law or in any way connected with him. Sri Shankar Rao was examined as (R.W. 9) and he corroborated this statement. He denied that he was in any way related to Sri Narain Din. He is a resident of Moradabad and was Secretary of the Safai Mazdoor Sangh at Lucknow at the time of the Election. According to him the appeal was printed under the direction of the Congress party authorities and the sum of Rs. 120 was spent by the Sangh from its own funds. He admitted that he placed the order with the local Gandhi Press and that the Sangh had spent a sum of over Rs. 1,000 in the election. There is thus no difficulty in accepting the statement of Shankar Rao that this expenditure of Rs. 120 was incurred not under the direction of the Respondent No. 1 but under the direction of his party executives.

Section 77 of the Representation of People Act only requires a candidate to furnish a correct account of all expenditure in connection with the election incurred or authorized by him or by his election agent. This item of expenditure was neither incurred nor authorized by him and it was not necessary for him to show it in his election return. The law in respect of maintenance of account of Election expenses has been simplified by the amendment of the Representation of People Act in 1956 and the scope of the expenses of which account has to be maintained has also been narrowed down. Under the Act, before its amendment, such accounts were to be maintained in respect of payments made by or authorized by the candidate or by his election agent or made on behalf of the candidate or in his interest by any other person with the consent of the candidate or his election agent for expenses incurred on account of, or in connection with the conduct or management of election; and of all unpaid claims in respect of such expenses of which the candidate or his election Agent was aware. After the amendment now, the account has to be kept only of all expenditure in connection with the election incurred or authorized by him or his election agent. It may be noted in this connection that since a sum of less than Rs. 4,000 has been shown by the Respondent No. 1 in his return, this item of Rs. 120 would have made little difference as the total expenditure is much less than the prescribed limit. If a party which had set up the candidate holds a meeting or takes out a procession or publishes leaflets in the constituency of its candidate then, even though it may directly or indirectly benefit the candidate, the expenditure incurred by the party will not be taken into account unless the candidate has been previously consulted and has authorized that expenditure to be incurred. The leaflet in question having been printed by the Sangh and the Respondent No. 1 not having incurred or authorized such expenditure, it was unnecessary for him to show it in his return. Thus none of the above three items was wrongfully suppressed by Respondent No. 1 in his return. The election expenses filed by the Respondent No. 1 cannot be held to be incorrect. Issue held accordingly.

Issues Nos. 9 and 10.—In the findings on Issues Nos. 1 to 8 above, none of the alleged corrupt practices has been established. The successful Respondent No. 1 had a lead of about 20,000 votes over the Petitioner. Even transfer of a few thousand votes from one side to the other was unlikely to materially affect the result of the election. The main parties indulged in a little mud slinging in their statements. The Petitioner alleged that the statement of the Respondent No. 1 to support on alibi was disbelieved in a Sessions case at Jakhimpur Kheri and he relied on the judgment in that case, while on the other hand it was alleged that two or three complaints had been filed for attempts to commit unnatural offences by Petitioner under Section 377/511 I.P.C. but that they were scotched due to his influence. The Petitioner stated that some complaints were due to party factions and that they were untrue. The Petitioner, however, having failed to establish any of the alleged corrupt practices is not entitled to any relief.

ORDER

The Petition fails and is dismissed. A sum of Rs. 500 is awarded as costs to the Respondent No. 1 against the Petitioner and this would be recoverable from the Security deposit made by Petitioner. The other respondents did not appear and are not entitled to any costs.

14th February, 1958.

(Sd.) H. P. VARSHNI, Member,

Election Tribunal, Shahjahanpur.

Judgment delivered in open court today the 14th February, 1958, at 2-50 P.M.

14th February, 1958.

(Sd.) H. P. VARSHNI, Member,

[No. 82/474/57.]

By order,

S. C. ROY, Secy.